

An
Bord
Pleanála

Board Direction
ABP-313122-22

The submissions on this file and the Inspector's report were considered at a Board meeting held on 24/09/2024.

The Board decided, as set out in the following Order, that

WHEREAS a question has arisen as to whether (a) excavation of land to create a lagoon system, including associated pipe work and mounding to facilitate groundwater lowering and discharge of water from the lands at Lismaine, Jenkinstown, County Kilkenny is or is not development or is or is not exempted development and

(b) Whether the operation of the quarry at Lismaine (which is an established use under the Planning and Development Act 2000 (as amended) with the discharge of water from the quarry to land outside the site ownership boundary at lands at Lismaine, Jenkinstown, Co Kilkenny with a hydrological connection to the River Barrow/River Nore SAC and Inchbeg pNHA is or is not development and is or is not exempted development within the meaning of the Planning and Development Act 2000 (as amended).

AND WHEREAS Kilkenny Co Council of County Hall, John Street, Kilkenny requested a declaration on these questions from An Bord Pleanála, 22nd day of March 2022:

AND WHEREAS An Bord Pleanála amended and amalgamated the said questions to read as a single question as follows:

Whether the current operation of a quarry, including the operation of a water management system which includes the construction of a lagoon on-site, to attenuate and discharge water off site, at Lismaine, Jenkinstown is or is not development or is or is not exempted development.

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to:

- (a) Sections 2(1) and 3(1)(a) of the Planning and Development Act 2000, as amended,
- (a) Article 6(3) and Class 3, Part 3, Schedule 2 of the Planning and Development Regulations 2001, (as amended)
- (b) Article 9(1)(a)(viiB) of the Planning and Development Regulations 2001, (as amended), and
- (c) The planning history of the site
- (d) Legal judgments in: *Krikke and others v. Barranafaddock Sustainable Electricity Ltd* [2022] SC 2021/133; *Waterford County Council v. John A Wood Ltd* [1999] 1 IR556; *Dublin County Council v. Tallaght Block Company Ltd* [1983] SC282/1981; *Monaghan County Council v. Brogan* [1987] IR333; *Roadstone Provinces Ltd v An Bord Pleanála* [2008] IEHC 210; *McGrath Limestone Works Ltd v An Bord Pleanála* [2014] IEHC 382.
- (e) The documentation on file and the report of the Inspector.

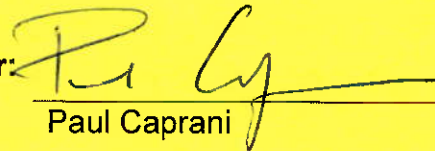
AND WHEREAS An Bord Pleanála has concluded that:

- (a) Based on the evidence before it of significant additional excavation at the quarry since 2018 into a bedrock of karstified limestone with significant fluctuating water table levels, there has been significant extraction of material below the water table on a consistent basis.
- (b) This significant extraction below the water table, in conjunction with the construction of an associated lagoon water management and the discharge of water off site has given rise to a change of use through intensification that constitutes a material change of use. Quarrying of this nature gives rise to significant planning and environmental considerations and impacts that would not have arisen in relation to the previous operations at the quarry. These include; direct impacts on ground water and water table levels over a potentially wide area having regard to the karstic nature of the underlying aquifer; potential impacts on sensitive receptors, including the River Barrow River Nore SAC which have qualifying interests that are particularly sensitive to changes in water quality and local wells and other water resources; and potential impacts in relation to the capacity of receiving water bodies.
- (c) There is no exemption for a material change of use of this type, and
- (d) While the construction of the lagoon system, in terms of works, may be deemed to fall within the scope of Class 3, Part 3, Schedule 2 of the Regulations, the said construction works are also subject to Article 9(1)(a)(viiB) as, on the basis of the information available, it is not possible to rule out likely significant effects on a European Site (River Barrow River Nore SAC) and a consequent requirement for appropriate assessment. The lagoon system, therefore, is not exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(4) of the 2000 Act, as amended, hereby decides that the current operation of a quarry, including the construction of a lagoon water

management system and discharge of water off site at Lismaine,
Jeninstown, County Kilkenny is development and is not exempted
development.

Board Member:



Paul Caprani

Date: 24/09/2024